

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 29 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0122-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
GUSTAVO ANTONIO SALMON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR036486

Honorable Javier Chon-Lopez, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Gustavo A. Salmon

Florence
In Propria Persona

HOWARD, Chief Judge.

¶1 Petitioner Gustavo Salmon pled guilty in 1992 to attempted sexual abuse of a minor under the age of fourteen and attempted molestation of a child under the age of fourteen, both preparatory dangerous crimes against children. The trial court sentenced

him to consecutive, presumptive ten-year prison terms, to be served consecutively to the sentence he was serving in another matter. We affirmed Salmon's convictions and sentences on appeal, *State v. Salmon*, No. 2 CA-CR 92-0750 (memorandum decision filed May 20, 1993), and denied relief on his petition for review of the court's denial of his first petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., *State v. Salmon*, No. 2 CA-CR 95-0156-PR (memorandum decision filed Aug. 15, 1995). In 2010, Salmon filed a second petition for post-conviction relief, arguing his sentence is illegal. This petition for review follows the court's denial, without a hearing, of Salmon's second petition. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 On review, Salmon argues the trial court abused its discretion by denying relief on his claim that his conviction for attempted sexual abuse of a minor under the age of fourteen should have been classified as a class four, rather than a class three felony, and that he should be resentenced accordingly. *See* Ariz. R. Crim. P. 32.1(c). Notably, Salmon did not file a notice of post-conviction relief or explain in his petition why he had waited almost nineteen years after he was sentenced and almost as many years after the mandates in his appeal and first post-conviction proceeding were issued to initiate this proceeding. *See* Ariz. R. Crim. P. 32.2(b) ("If the specific exception [to preclusion] and meritorious reasons do not appear substantiating the claim and indicating why the claim was not stated . . . in a timely manner, the notice [of post-conviction relief] shall be summarily dismissed."). The court found Salmon's claim precluded, and in any event, without merit. *See* Ariz. R. Crim. P. 32.2(a). Based on the record before us, we cannot say the court abused its discretion in ruling as it did. The court denied relief in a

thorough ruling that clearly identified Salmon’s argument and correctly ruled on it in a manner that will allow future courts to understand its resolution. We therefore approve and adopt the court’s ruling and see no need to reiterate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶3 In addition, to the extent Salmon asks us to consider a claim he “admits” he did not “fully exhaust[]” in his Rule 32 petition, we decline to consider it. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court will not consider on review issue on which trial court had not first had opportunity to rule); *see also* Ariz. R. Crim. P. 32.9(c) (aggrieved party may petition appellate court “for review of the actions of the trial court”).

¶4 Because the trial court did not abuse its discretion by denying post-conviction relief, we grant the petition for review but deny relief.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge